

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Flint Living Trust

**CASE 41G-0565-R-2023**  
41G 103543-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

**FINDINGS OF FACT**

1. Claim 41G 103543-00 is a domestic claim from North Willow Creek owned by Flint Living Trust.

2. The claim appeared in the 41G Preliminary Decree with the following late objection issue remarks:

ON AUGUST 21, 2003 GEORGE TAYLOR FILED AN OBJECTION TO THE OWNERSHIP, PRIORITY DATE, PLACE OF USE, MAXIMUM ACRES, POINT OF DIVERSION, AND MEANS OF DIVERSION, AND ALLEGED ABANDONMENT/NON-PERFECTION. THIS IS A LATE OBJECTION AND WILL NOT BE HEARD UNTIL AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

ON SEPTEMBER 22, 2006 BRIAN T. RUMSEY FILED AN OBJECTION TO THE OWNERSHIP, FLOW RATE, AND VOLUME. THIS IS A LATE OBJECTION AND WILL NOT BE HEARD UNTIL AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

ON MARCH 23, 2007, BRIAN T. RUMSEY FILED AN OBJECTION TO "OTHER", SPECIFICALLY, "EASEMENT." THIS IS A LATE OBJECTION AND WILL NOT BE HEARD UNTIL AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

3. In a January 26, 2023 Order, a deadline was set for George Taylor and Brian Rumsey to indicate whether they would pursue their Objections or for another party to file a motion for substitution for the Objections. The order stated that if nothing was filed by the deadline the Objections would be dismissed and the issue remarks would be removed from the claim. Nothing was filed by the deadline. The late objection issue remarks should be removed from the claim.

4. Claim 41G 103543-00 also received the following issue remarks:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON NORTH WILLOW CREEK WITH A PRIORITY DATE PREDATING CASE NO. 5591 , GALLATIN COUNTY.

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

These issue remarks are considered notice issue remarks. The remarks have served their purpose of providing notice and should be removed.

## CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

3. The requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

4. The issue remarks appearing on claim 41G 103543-00 not overcome the prima facie status of the claim. The issue remarks should be removed from the claim.

5. If a claimant, objector, or intervenor fails to comply with an order issued by the water court, the water court may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Sanctions applied against objectors and intervenors may include dismissal of the objector or intervenor from the proceeding. Rule 22, W.R.Adj.R. No one responded to the court's order setting filing deadline. The late objections to claim 41G 103543-00 should be dismissed.

## RECOMMENDATIONS

1. The issue remarks should be removed from claim 41G 103543-00.
2. The late objections to claim 41G 103543-00 should be dismissed.

A Post Decree Abstracts of Water Right Claims is served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Flint Living Trust  
Fred R. Flint & Joy A. Flint, Trustees  
PO Box 565  
Pony, MT 59747-0565

Brian Rumsey  
PO Box 509  
Pony, MT 59747

George Taylor  
**~~PO Box 556~~**  
**~~Pony, MT 59747~~**  
***(Return mail received)***

**Note: Service List Updated 4-11-2023**

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
JEFFERSON RIVER  
BASIN 41G**

**Water Right Number:** 41G 103543-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** FLINT LIVING TRUST  
FLINT FRED R & JOY A TRUSTEES  
PO BOX 565  
PONY, MT 59747 0565

**Priority Date:** DECEMBER 31, 1880

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 30.00 GPM

**Volume:** 2.00 AC-FT

**Households:** 1

**Maximum Acres:** 2.00

**Source Name:** NORTH WILLOW CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNW	19	2S	2W	MADISON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Ditch Name:** MASON DITCH

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		NWNENW	19	2S	2W	MADISON

**Total:** 2.00